



REDACTED – FOR PUBLIC INSPECTION

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March 6, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Confidentiality Request for Certain Information Provided as Part of Puerto Rico Telephone Company, Inc.'s Ex Parte Presentation in WC Docket Nos. 18-143, 10-90, and 14-58

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 and 1.1206 of the Commission's rules,¹ Puerto Rico Telephone Company, Inc. ("PRTC") hereby requests confidential treatment of certain confidential business information contained in documents being filed today as part of PRTC's Ex Parte Notice. Specifically, PRTC requests that the presentation marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**" in the Ex Parte Notice be withheld from routine public inspection, as it contains sensitive business information. PRTC is filing a redacted version of the Ex Parte Notice via the Electronic Comment Filing System.

The Ex Parte Notice contains confidential and commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").² Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential."³ Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.⁴

Section 0.457(d)(2) allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure,

¹ 47 C.F.R. §§ 0.457, 0.459, and 1.1206.

² See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

³ 5 U.S.C. § 552(b)(4).

⁴ See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

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pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b) for such requests, PRTC hereby submits the following:

1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).* PRTC seeks confidential treatment for the following information in its Ex Parte Notice:

- (a) Figures regarding the operational status of various network components after Hurricane Maria and the progress made;
- (b) Diagram depicting damage to PRTC's main fiber ring routes after Hurricane Maria;
- (c) Figures regarding the operational status of various fixed network components;
- (d) Figures regarding the operational status of various mobile network components;
- (e) Figures regarding Internet traffic before and after the hurricanes; and
- (f) Figures regarding the operational status of PRTC's interconnection points after Hurricane Maria and the progress made; and
- (g) Chart depicting current status of fiber optic rings;

This information is commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2)).* On May 29, 2018, the Commission released an Order and Notice of Proposed Rulemaking creating the Uniendo a Puerto Rico Fund and making proposals regarding the size of the fund and how best to distribute the support going forward. PRTC, as the incumbent local exchange carrier in Puerto Rico, has a significant interest in the outcome of this proceeding, which is reflected in its Ex Parte Notice.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3)).*

The information for which PRTC seeks confidential treatment is plainly sensitive commercial information that companies would normally keep confidential and that PRTC, in fact, keeps confidential. See 5 U.S.C. § 552(b)(4). Disclosure of such information could have a significant impact on PRTC's commercial operations by enabling competitors to have a better

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understanding of PRTC’s operational and financial constraints after the hurricanes and its business plans and strategies, enabling such competitors to better compete against PRTC.

The Comments contain information about PRTC that is clearly “commercial” in nature. See *Board of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the term “commercial,” as used in Section 552(b)(4), its ordinary meanings). Under well-settled case law, such material “is ‘confidential’ . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993). In addition, the Commission has broadly defined commercial information, stating that “[c]ommercial” is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business’s commercial operations.” *Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*. Substantial competition exists in Puerto Rico both in the wireline and wireless sectors. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*. Release of the information in the Ex Parte Notice could have a significant impact on PRTC’s commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect PRTC’s future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use the information in the Ex Parte Notice to negotiate more favorable terms in their own agreements. Competitors could use this information to better compete against PRTC. Thus, it is “virtually axiomatic” that the information qualifies for withholding under Exemption 4 of FOIA, see *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir., 1976), and under Sections 0.457(d)(2) and 0.459(b).

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. None of this information is provided to the public, and PRTC does not provide this information to third parties except pursuant to agreements to maintain confidentiality.

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(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7)).* PRTC has not made this information available to the public and has not disclosed the information to any third parties except pursuant to arrangements intended to maintain confidentiality.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8)).* PRTC respectfully requests that the Commission withhold the relevant information in the Ex Parte Notice from public inspection indefinitely. PRTC would not, in the normal course of business, provide this information to the public.

Please contact the undersigned with any questions.

Respectfully Submitted,

/s/ Edgar Class

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

Attachments



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March 6, 2019

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Ex Parte Presentation (WC Docket Nos. 18-143, 10-90 and 14-58) –
Puerto Rico Telephone Company, Inc.**

Dear Ms. Dortch:

On March 4, 2019, Puerto Rico Telephone Company, Inc. ("PRTC") met with Randy Clarke, Acting Legal Advisor for Wireline and Public Safety to Commissioner Starks, in connection with the Uniendo a Puerto Rico Fund proceeding. The participants on behalf of PRTC were Francisco Silva, PRTC's General Counsel, David Blessing of Parrish Blessing & Associates (a consultant to PRTC), and the undersigned of Wiley Rein LLP.

At the meeting, PRTC discussed the attached presentation, explaining the progress PRTC has made rebuilding its network and restoring service to customers after Hurricane Maria, as well as the challenges that remain. In addition, PRTC discussed its recommendation that the Commission increase the Stage 2 budget for fixed providers, the benefits of offering the right of first refusal to PRTC, and how the Commission might structure an alternative competitive request for proposal process, if necessary.

Portions of PRTC's written presentation contain confidential and commercially sensitive information. A redacted version of the presentation is enclosed with this letter, which is being filed electronically in the above-referenced dockets. The confidential version of the presentation, along with a request for confidential treatment, is being filed with the Commission in accordance with 47 C.F.R. §§ 0.457, 0.459 and 1.1206. In accordance with the Commission's rules, PRTC respectfully requests that unredacted copies of this presentation not be made publicly available.

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Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

Attachment

cc: Randy Clarke



Uniendo a Puerto Rico Fund

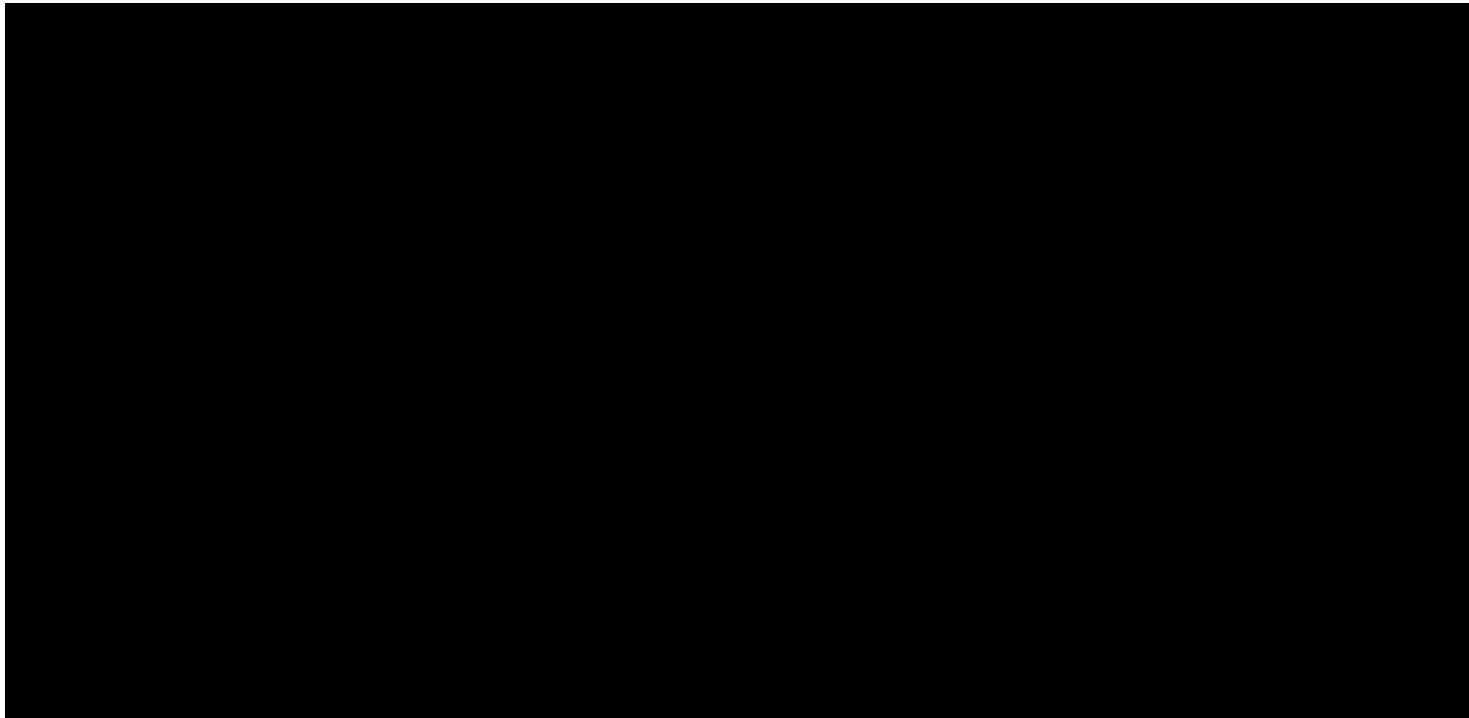
WC Docket No. 18-143

**Presentation by Puerto Rico
Telephone Company, Inc. d/b/a Claro**

March 4, 2019
Washington, DC

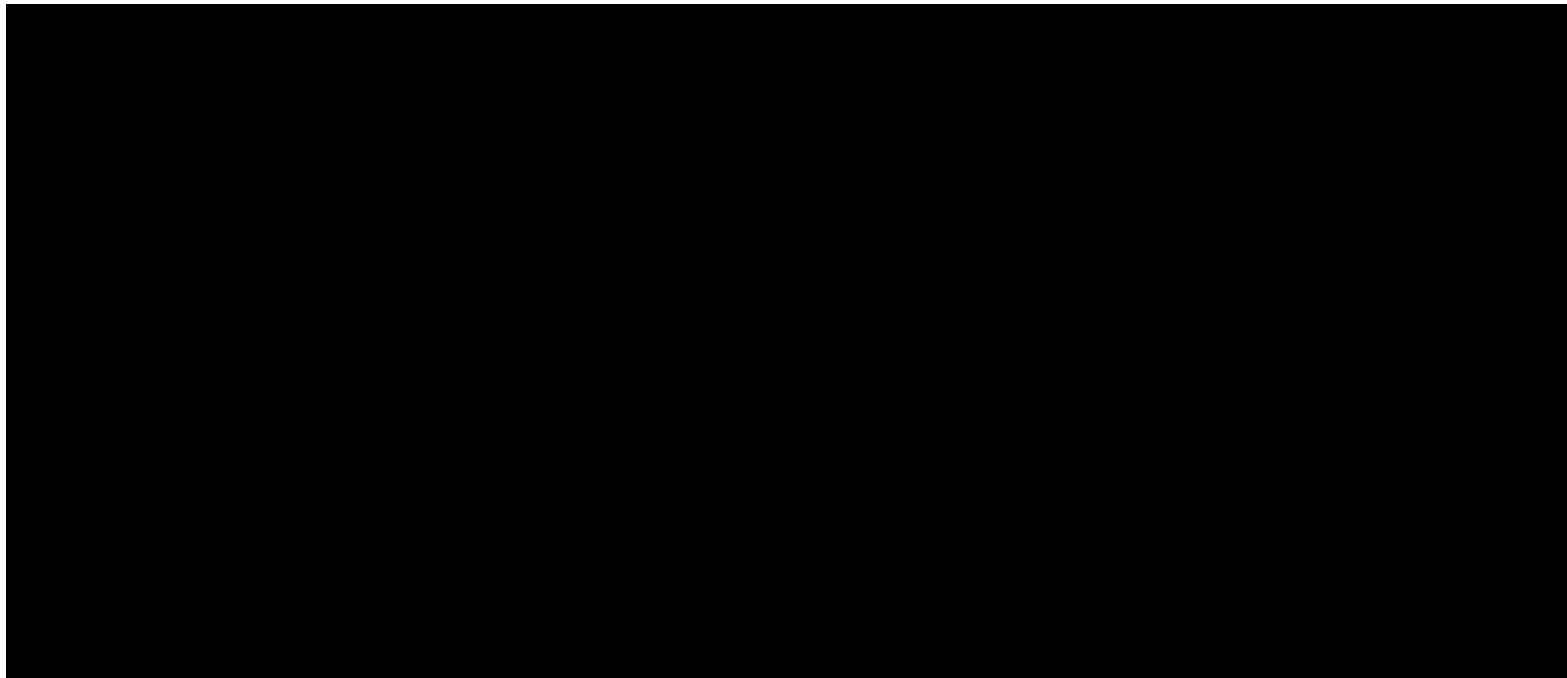


PRTC Restoration Efforts



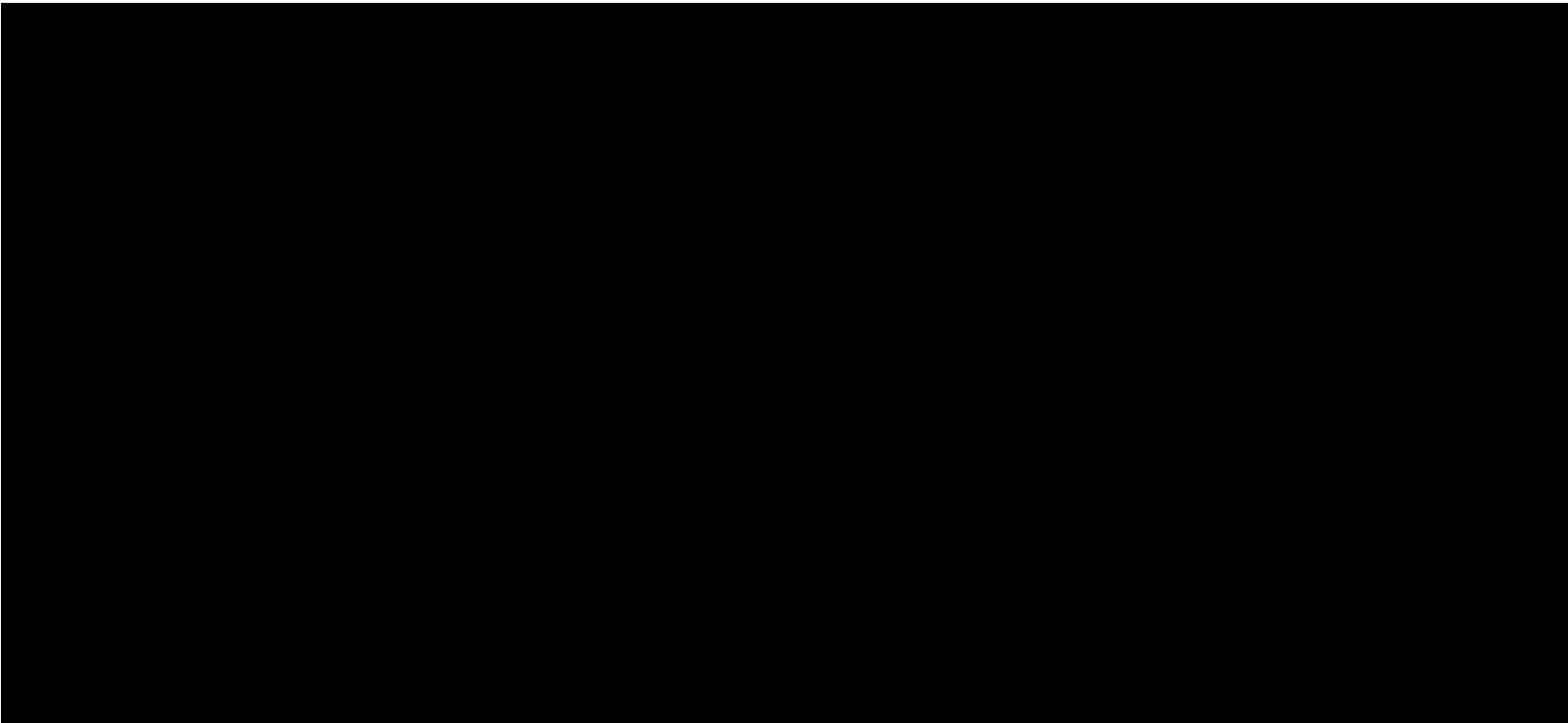
Confidential

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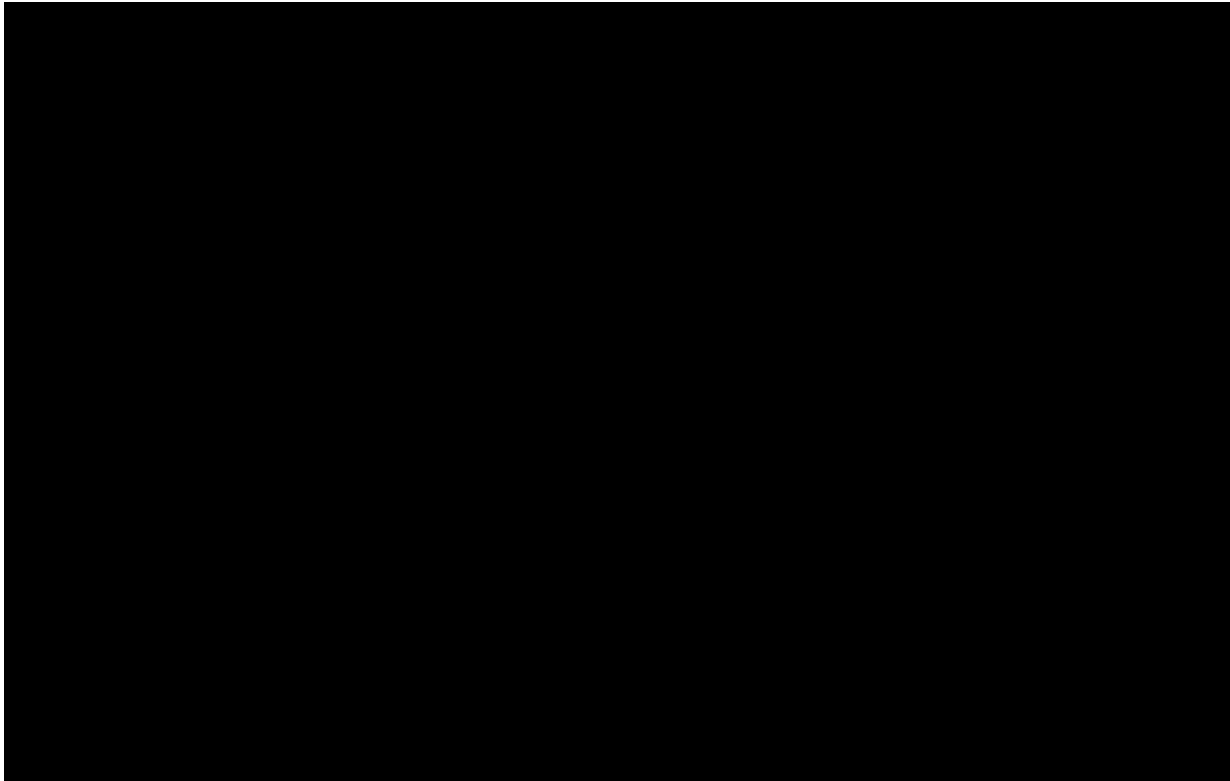
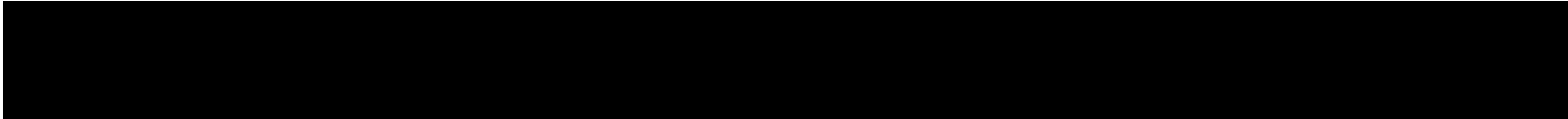


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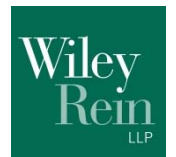
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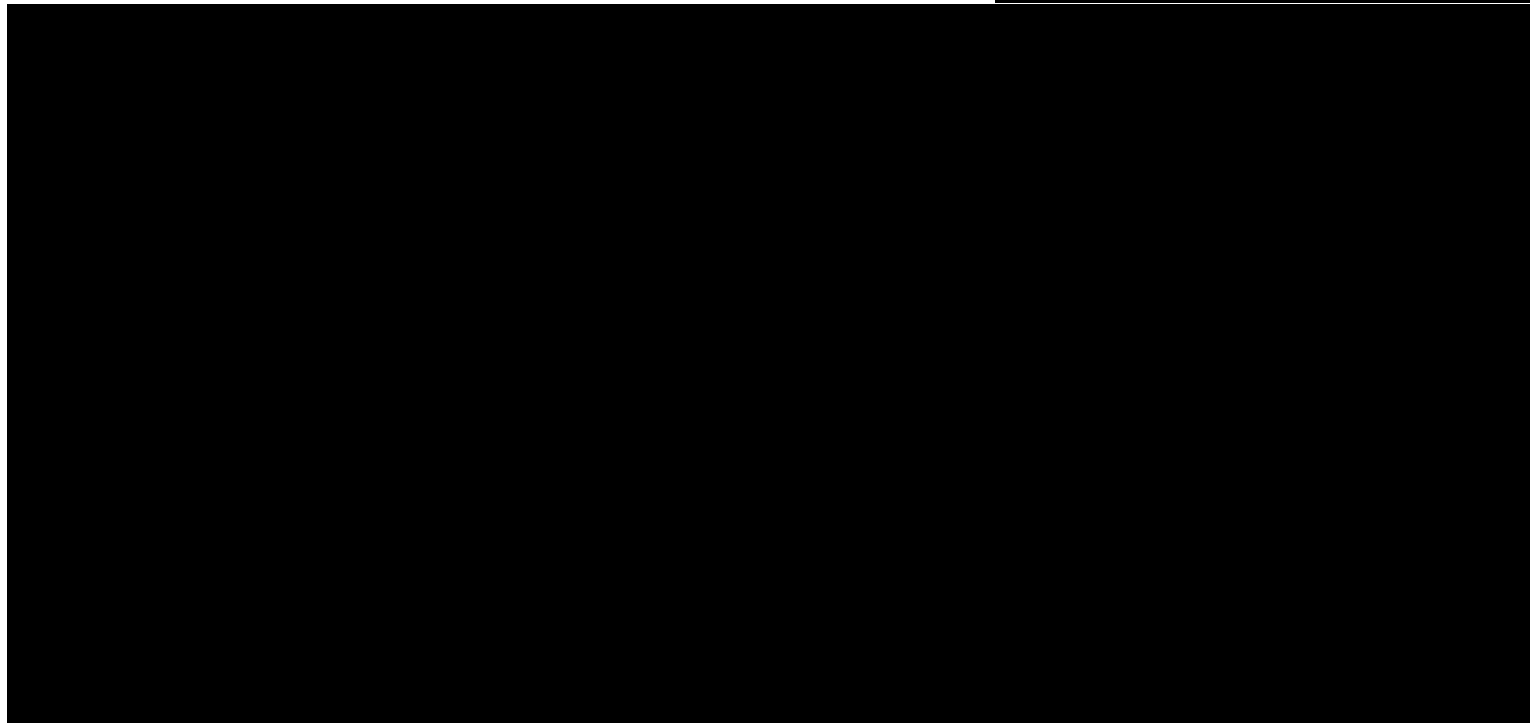
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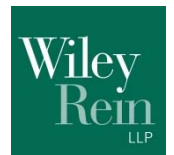


PRTC Restoration Efforts:



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[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

Confidential

Uniendo a Puerto Rico Fund Rulemaking Proceeding

Need for Increased Budget for Fixed Providers

- Consensus that the proposed budget should be increased
 - Devastation by the hurricanes was catastrophic
 - Unique costs and challenges of providing service in Puerto Rico
 - Commission's expanded universal service goals for Puerto Rico now include hurricane restoration, broadband expansion, and network hardening objectives
- PRTC's hurricane restoration costs alone approximate the fixed broadband service budget proposed in the NPRM
- Additional annual budget for fixed providers of \$62 million above existing legacy frozen support would be more commensurate with carriers' restoration costs and capital expenditures required for meeting the Commission's objectives

Budget for Fixed Providers (cont'd)

- Difference between CAM estimated cost of \$553 million and expected subscriber revenue of \$456 million is \$97 million
- FCC's proposal of \$44.5 million would recover less than 50% percent of the \$97 million deficit
- To address shortfall in the Commission's proposed budget, PRTC proposes the adoption of an additional annual budget for fixed providers of \$62 million above the existing legacy frozen support for a total of \$98 million per year
- Using the FCC's CAM Model support allocation by census block, support may be rolled up to the municipio level and allocated based on the adopted budget

Right of First Refusal

- Commission should offer the right of first refusal (“RoFR”) to PRTC because PRTC’s distribution network reaches the most customer locations by far
 - Would accelerate longer-term efforts to rebuild and expand voice and broadband infrastructure for the benefit of the largest number of locations in the shortest amount of time and the most economically efficient manner
 - Would avoid inefficient duplication of facilities
- No other broadband provider in Puerto Rico can combine the efficiencies, scale, scope and history of providing service to bring advanced broadband services to unserved areas throughout the island
- If offered the \$620M in additional funding on a RoFR basis, PRTC is prepared to modernize and expand broadband service of at least 10/1 Mbps, and up to 1 gigabit to 100% of inhabited locations in 10 years

Alternative Competitive RFP Process

- If the Commission declines to adopt a RoFR approach, it should award Stage 2 Fixed Fund support through a competitive request for proposal (“RFP”) process
 - Single-stage application process should allow for at least two rounds
- Proposals should be scored based on:
 - Amount of support sought -- but this should not be the most heavily weighted factor because it would penalize proposals that reflect the increased costs of deploying a storm-hardened network
 - Metrics of the proposed service (*e.g.*, speed, latency, minimum usage allowance);
 - Schedule for completion; and
 - Financial and technical capabilities
- Experience has shown that an auction approach would only introduce inefficiencies and delays

Term of Support and Eligibility

- Term of Support
 - A ten-year term of support is appropriate and consistent with FCC actions in other proceedings.
- Eligibility
 - Eligibility should be limited to providers that, according to June 2017 FCC Form 477 data, had existing fixed networks and provided broadband service in Puerto Rico prior to the hurricanes, as proposed in the NPRM
 - Limiting eligibility as proposed by the Commission is the most reasonable and economically efficient approach to leverage existing facilities to minimize costs and accelerate the deployment of broadband
 - Permitting carriers that did not provide service in Puerto Rico prior to the hurricanes to participate in the Stage 2 Fixed Fund would lead to the subsidization of duplicative networks

Minimum Geographic Area

- Commission should use municipios as the basic geographic areas for support, as proposed in the NPRM
 - Municipios represent known and measurable political, operational and social delineations
 - Would allow providers to achieve economies of scale that would not be available with smaller areas
- Using areas smaller than municipios (such as census blocks or census block groups) would be economically inefficient and administratively unworkable
 - There are 78 municipios, 55,405 census blocks and 2,551 census block groups
 - Basing support on smaller minimum geographic areas would force the Wireline Bureau to evaluate and adjudicate 710 or 32 times the number of transactions
 - Would lead to a significant number of disputes concerning borders, which goes against the Commission's goal of expediting Stage 2 support
 - Will likely result in providers cherry-picking the most profitable areas while leaving a large number of orphaned areas, which would hurt consumers in Puerto Rico

Allocation of Stage 2 Fixed Support

- Commission should use the CAM model to allocate support on a census block level but award aggregated census block support at the municipio level
 - Census blocks mapped to municipalities and support rolled-up to the municipio level
 - PRTC's October 12, 2018 ex parte demonstrates the feasibility of this approach
 - Only areas unserved by unsubsidized competitor eligible for support
- Support may be used in all areas of Puerto Rico
 - Properly designed build-out obligations to target support to unserved areas
 - Eliminates need to establish a challenge process
 - Encourages expansion of service to previously unserved areas

Number of Locations in Each Geographic Area

- Difficult to determine the number of locations in post-hurricane Puerto Rico
- Commission should require that all locations in a municipio be served by the end of the funding term without determining exactly how many
 - Loss of many household and small business locations
 - Migration of residents to the U.S. mainland
- Municipio authorities could assist in certifying that the obligations have been met with respect to the locations within their respective jurisdictions

Service Obligations

- PRTC supports the Commission's proposal regarding service obligations:
 - Download/upload speeds of at least 10/1 megabits per second
 - Roundtrip latency of no greater than 100 milliseconds
 - 170 GB/average usage
 - Must offer voice telephony service throughout the entire supported geographic area, regardless of the platform